

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
Western DIVISION

Richard Maurice Jarrell

(Enter Above the Name of the Plaintiff in this Action)

8:19 cv 349

vs.

Army Review Boards Agency

(Enter above the name of the Defendant in this Action)

THOMAS M. ROSE

If there are additional Defendants, please list them:

National Personnel Records Center

SHARON L. OVINGTON

United States Attorney

United States Attorney General

COMPLAINT

I. Parties to the action:

Plaintiff: Place your name and address on the lines below. The address you give must be the address where the court may contact you and mail documents to you. A telephone number is required.

Richard Maurice Jarrell

Name - Full Name Please - PRINT

485 Caldwell Circle

Street Address

New Carlisle, Ohio 45344

City, State and Zip Code

937-215-8426

Telephone Number

If there are additional Plaintiffs in this suit, a separate piece of paper should be attached immediately behind this page with their full names, addresses and telephone numbers. If there are no other Plaintiffs, continue with this form.

Defendant(s):

Place the name and address of each Defendant you listed in the caption on the first page of this Complaint. This form is invalid unless each Defendant appears with full address for proper service.

1. Army Review Boards Agency  
Name - Full Name Please  
251 18th Street South Suite 385 Arlington, Virginia 22202-3531  
Address: Street, City, State and Zip Code
2. National Personnel Records Center  
1 Archives Drive St. Louis, MO. 63138-1002
3. United States Attorney  
200 West Second Street Suite 600 Dayton, Ohio 45402
4. United States Attorney General  
950 Pennsylvania Avenue NW Washington, DC 20530-0001
5. \_\_\_\_\_  
\_\_\_\_\_
6. \_\_\_\_\_  
\_\_\_\_\_

If there are additional Defendants, please list their names and addresses on a separate sheet of paper.

## II. Subject Matter Jurisdiction

Check the box or boxes that describes your lawsuit:

- ☐ Title 28 U.S.C. § 1343(3)  
[A civil rights lawsuit alleging that Defendant(s) acting under color of State law, deprived you of a right secured by federal law or the Constitution.]
- ☐ Title 28 U.S.C. § 1331  
[A lawsuit "arising under the Constitution, laws, or treaties of the United States."]
- ☐ Title 28 U.S.C. § 1332(a)(1)  
[A lawsuit between citizens of different states where the matter in controversy exceeds \$75,000.]
- ☒ Title 5 United States Code, Section 552a  
[Other federal status giving the court subject matter jurisdiction.]

III. Statement of Claim

Please write as briefly as possible the facts of your case. Describe how each Defendant is involved. Include the name of all persons involved, give dates and places.

Number each claim separately. Use as much space as you need. You are not limited to the papers we give you. Attach extra sheets that deal with your statement claim immediately behind this piece of paper.

1. The Federal District Court has jurisdiction over this matter in accordance with the provisions of the Privacy Act of 1974 5 U.S.C. § 552a. Whenever any agency fails to comply with any other provisions of this section, or any rule promulgated there under, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

Five claims and six exhibits are attached immediately behind this page.

2. Claim number 1: On 10/28/2016 my brother Stephen Jarrell filed a claim with the Army Review Boards Agency requesting that the Board make corrections to the records in his file. In order to determine if Stephen's request had merit the Board requested Stephen's file from the National Personnel Records Center. On 10/8/2019 Stephen requested a copy of his discharge physical, and a few other records, from the Army Review Boards Agency. On 10/9/2019 the FOIA officer at the Army Review Boards Agency responded to his request and sent him a copy of my discharge physical examination. It was then that I became aware that an unknown employee at the National Personnel Records Center, without due diligence, disclosed my Army discharge physical examination to another agency (the Army Review Boards Agency) without my prior written consent in a willful and intentional violation of the Privacy Act Section 3 (b).
3. Claim number 2: On 10/9/2019 Paul A. Petty the FOIA officer for the Army Review Boards Agency, without due diligence, disclosed my Army discharge physical to a third party without my prior written consent in a willful and intentional violation of the Privacy Act Section 3 (b). The disclosure of this record exposes me to harm because of the real possibility that such a disclosure could lead to the theft of my identity.
4. Claim number 3: The disclosure of my personal health records has caused me harm because it was a blatant invasion into my right to privacy. 5 U.S.C. § 552a Section 2 (4) (As Amended) The Congress finds that the right to privacy is a personal and fundamental right protected by the Constitution of the United States.



5. Claim number 4: 5 U.S.C. § 552a Section 2 (b) (2) permits an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent. The misuse of my discharge physical to show that there was nothing physically or mentally wrong with my brother when he was discharged from the Army would cause me harm because I would have to continue to advocate for my brother as well as perform numerous other tasks that my brother quite frankly is unable to perform. These tasks include, but are not limited to, driving him to and from medical appointments and helping him to correctly interpret letters and decisions from various government agencies. The misuse of my discharge physical examination is an attempt by the Army Review Boards Agency to commit fraud, and if successful would be a miscarriage of justice and would result in an undue burden to be placed upon me.
6. Claim number 5: On 4/4/1990 the Board for Correction of Military Records made a decision in an application my brother Stephen made to them. His application was denied but the Board made an observation (exhibit E 2.) on page 3 paragraph 3 and alleged that Stephen stated that there had been no change in his medical condition since his last examination. Exhibit F shows the examination they were referring to and the date of that examination was 11/10/1971. Since Stephen was never given a discharge physical prior to his discharge the only discharge physical they could be referring to is my discharge physical. The Board misused my discharge physical to show that Stephen did not receive his injuries as a result of the assault on him that they refer to on page 3 in paragraph 1 of their decision. The reason they were able to make that statement is because they used my discharge physical to show that

Stephen had no physical or mental defects at the time he was discharged on 12/7/1971. This misuse of my discharge physical to show that Stephen had nothing wrong with him caused me harm due to the undue burden placed on me because the assault, the Board referenced, caused Stephen both mental and physical injuries. Those injuries include PTSD, depression, memory loss, confusion, cognitive deficits, anxiety, and other mental problems as well as physical injuries such as a fractured styloid process bone and Temporomandibular Joint Dysfunction both of which cause severe headaches swallowing problems and a variety of other health problems. To summarize the Army Board for Correction of Military Records (Army Review Boards Agency) used fraud to deny Stephen's claim which resulted in an undue burden being placed upon me.

7. Exhibit A 1. & A 2. is a two page letter from the FOIA officer at the Army Review Boards Agency explaining that the records were on loan to them from the National Personnel Records Center.
8. Exhibit B 1. & B 2. is a two page copy of my discharge physical which clearly shows that the examination took place at Fort Huachuca, Arizona which was where I was stationed prior to my discharge, on 11/2/1971. In box number one you can discern that the name on the document is my name Richard M. Jarrell and not Stephen P. Jarrell. You can also see that the year of birth is 1951 and not 1953 the year my brother, Stephen Jarrell, was born.
9. Exhibit C is a Morning Report showing, in section III, that my brother Stephen was

assigned to the Personnel Confinement Facility at Fort Ord, California on 11/4/1971.

10. Exhibit D 1. & D 2. is a two page order showing that Stephen remained in the Personnel Confinement Facility at Fort Ord until he was discharged on 12/7/1971.

11. Exhibit E 1. & E 2. is two pages of a decision by the Board for Correction of Military Records dated 4/4/1990.

12. Exhibit F is a Statement of Medical Condition dated 12/7/1971.



**DEPARTMENT OF THE ARMY**  
ARMY REVIEW BOARDS AGENCY  
251 18TH STREET SOUTH, SUITE 385  
ARLINGTON, VA 22202-3531

Exhibit A 1.

October 9, 2019

FOIA PA Office

Stephen P. Jarrell  
485 Caldwell Circle  
New Carlisle, OH 45344-2846

Dear Mr. Jarrell:

This letter responds to your Freedom of Information Act (FOIA)/Privacy Act request, dated October 8, 2019, received in this office on October 9, 2019, requesting a copy of documents from your military personnel record on loan to us from the National Personnel Records Center (NPRC).

As a basis of your request, you provided a copy of a AGPERCEN Form 85 showing that on November 3, 1971, AGPERCEN forwarded to the Headquarters Commandant at Fort Ord your personnel record (DA Form 201), health record (DD Form 722 & 722-1), extracts from the morning reports (DA Form 188), and allied documents. This form does not show what is in your personnel record at NPRC.

A page by page review was made of your personnel record loaned to us by NPRC. The DD Form 722 & 722-1 is a Health Record jacket (folder) which would contain your medical documents. We did not receive that from NPRC. Usually the DD Form 722 & 722-1 are transferred to the Department of Veterans Affairs (VA) after Soldiers are discharged where they keep that record. This is particularly true when Veterans have had medical or benefit interactions with the VA.

You requested a copy of DA Forms 188 (Extract Copy of Morning Report) dated and prepared on April 7, 1971, and April 17, 1971. In a page by page review of your personnel file, we found only two DA Forms 188 (copies enclosed), one dated July 14, 1971, and one dated November 4, 1971.

You requested a copy of your discharge physical examination. We found a copy dated November 11, 1971 (copy enclosed), which was part of your separation packet. It is a poor quality copy. The original is likely in your health record at the VA.

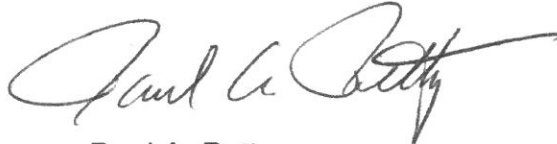


-2-

Exhibit A 2.

I trust that this answers your FOIA request.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul A. Petty". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Paul A. Petty  
FOIA PA Officer

Enclosures

45. URINALYSIS: A. SPECIFIC GRAVITY		46. CHEST X RAY (Place, date, film number and result)	
B. ALBUMIN	D. MICROSCOPIC	3084 Raymond W. Bliss Army Hospital Fort Huachuca, Arizona 85617	
C. SUGAR			
47. SEROLOGY (Specify test used and result)		48. EKG	49. BLOOD TYPE AND RH FACTOR
RPR - Negative			50. OTHER TESTS

Exhibit B 2.

MEASUREMENTS AND OTHER FINDINGS											
51. HEIGHT 66"	52. WEIGHT 135	53. COLOR HAIR BRN.	54. COLOR EYES BRN.	55. BUILD: (Check one) SLENDER <input checked="" type="checkbox"/> MEDIUM <input type="checkbox"/> HEAVY <input type="checkbox"/> OBESE <input type="checkbox"/>				56. TEMPERATURE 98.6			
57. BLOOD PRESSURE (Arm at heart level)				58. PULSE (Arm at heart level)							
A. SITTING SYS. DIAS. C. STANDING (3 min.) SYS. DIAS. 72	B. AFTER EXERCISE C. 2 MIN. AFTER D. RECUMBENT E. AFTER STANDING 3 MIN.										
59. DISTANT VISION				60. REFRACTION				61. NEAR VISION			
RIGHT 20/ 80		CORR. TO 20/		BY S.		CX		✓ - 1		CORR. TO BY	
LEFT 20/ 30		CORR. TO 20/		BY S.		CX		✓ - 1		CORR. TO BY	
62. METEOROPHORIA (Specify distance)											
ES°		EX°		R. H.		L. H.		PRISM DIV.		PRISM CONV. CT	
63. ACCOMMODATION		64. COLOR VISION (Test used and result) 0/14 PASSED						65. DEPTH PERCEPTION (Test used and score)		UNCORRECTED	
RIGHT LEFT										CORRECTED	
66. FIELD OF VISION		67. NIGHT VISION (Test used and score)						68. RED LENS TEST		69. INTRAOCULAR TENSION	
70. HEARING		71. AUDIOMETER						72. PSYCHOLOGICAL AND PSYCHOMOTOR (Tests used and score)			
RIGHT WV /15 SV /15		250 250 500 1000 2000 4000 8000 16000									
LEFT WV /15 SV /15		RIGHT X 0 0 0 X 15 / X									
		LEFT X 0 0 0 X 10 / X									
73. NOTES (Continued) AND SIGNIFICANT OR INTERVAL HISTORY											

(Use additional sheets if necessary)

## 74. SUMMARY OF DEFECTS AND DIAGNOSES (List diagnoses with item numbers)

## 75. RECOMMENDATIONS—FURTHER SPECIALIST EXAMINATIONS INDICATED (Specify)

## 77. EXAMINEE (Check)

- A. ☒ IS QUALIFIED FOR  
B. ☐ IS NOT QUALIFIED FOR

## 78. IF NOT QUALIFIED, LIST DISQUALIFYING DEFECTS BY ITEM NUMBER

## 79. TYPED OR PRINTED NAME OF PHYSICIAN

B. ASLESON  
CPT MC

## SIGNATURE

## 80. TYPED OR PRINTED NAME OF PHYSICIAN

## SIGNATURE

## 81. TYPED OR PRINTED NAME OF DENTIST OR PHYSICIAN (Indicate which)

## SIGNATURE

## 82. TYPED OR PRINTED NAME OF REVIEWING OFFICER OR APPROVING AUTHORITY

KENNETH R. KAISCH COL. MC

## SIGNATURE

NUMBER OF ATTACHED SHEETS



Exhibit C

## EX CT COPY OF MORNING REPORT

For use of this form, see AR 600-10; the proponent agency is The Adjutant General's Office

## SECTION I - IDENTIFICATION OF INDIVIDUAL CONCERNED

1. LAST NAME, FIRST NAME, MIDDLE INITIAL (Includes Sr, Jr, 2d, III, etc, as applicable)	2. GRADE	3. SERVICE NO./SSAN
JARRELL STEVEN P	PV1	237-98-0519

## SECTION II - EXTRACT COPY OF MORNING REPORT OF

4. REPORTING UNIT AS SHOWN ON MORNING REPORT	5. PARENT UNIT AS SHOWN ON MORNING REPORT
USA Pers Con Fac (Proc)	Hq Comd USATC Inf

## 6. DATE, NAME, SERVICE NUMBER, GRADE, REMARKS, AND AUTHENTICATION EXTRACTED FROM MORNING REPORT

Ending 2400 hrs 3 Nov 71  
Jarrell Steven P 237-98-0519 PV1

ACCESSION  
Rtn-Jd para 553 SO 307 HQ USATC INF & Ft  
Ord CA EDCSA 27 Oct 71 Fr DFR of A-3-1 Ft  
Jackson SC app civ Upland CA PD 27 Oct 71  
RMC March AFB CA 27 Oct 71 trf PMO Ft Mac-  
Arthur CA 29 Oct 71 trf this sta 2 Nov 71

/t/ JERRY L MOORE CPT INF ASST ADJ /s/ Jerry L Moore

## SECTION III - CERTIFICATION AND AUTHENTICATION OF EXTRACT

7. I CERTIFY THAT I AM (Check one)

☐ THE COMMANDING OFFICER ☒ THE PERSONNEL OFFICER

OF THE ORGANIZATION RECORDED IN SECTION II

☐ AN ADJUTANT GENERAL IN THE OFFICE OF THE ADJUTANT GENERAL, UNITED STATES ARMY,

AND OFFICIAL CUSTODIAN OF THE MORNING REPORTS OF THE ORGANIZATION RECORDED IN SECTION II, AND THAT THE FORE-  
GOING IS A TRUE AND COMPLETE COPY (Including any Signature or Initials Appearing Thereon) OF THAT PART OF THE MORNING  
REPORT OF SAID ORGANIZATION SUBMITTED AT FT ORD CA 93941

FOR THE DATES INDICATED IN SAID COPY WHICH RELATE TO THE PERSON REFERRED TO IN EXTRACT COPY.

8. COMPLETE DESIGNATION OF ORGANIZATION AND STATION (mailing address) HAVING CUSTODY OF THE MORNING REPORT

USA PERS CON FAC (WOMY IN) FT ORD CA 93941

9. DATE THIS EXTRACT PREPARED

4 Nov 71

10. TYPED NAME, GRADE, AND BRANCH OF SERVICE

JERRY L MOORE CPT INF ASST ADJUTANT

11. SIGNATURE (Facsimile or Stamped Signature Not Acceptable)


DA FORM 188  
1 MAR 60

PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE.

inc 13



Exhibit D 1.

DEPARTMENT OF THE ARMY  
HEADQUARTERS  
UNITED STATES ARMY TRAINING CENTER, INFANTRY  
AND

Fort Ord, California 93941

This order will not be furnished to any commercial enterprise or representative thereof to be used for purpose of solicitation. (Paragraph 4, AR 210-7)

3 December 1971

SPECIAL ORDERS  
NUMBER 337  
EXTRACT

598. TC 205. Following individual reassigned to Transfer Station or Transfer Point for separation processing and will proceed on PERMANENT CHANGE OF STATION as indicated below:

JARRELL, STEPHEN P 237-98-0519 PVI 09B00 USA Pers Con Fac USATC Inf (WOMYIN)  
Ft Ord CA 93941

ADMINISTRATIVE ACCOUNTING DATA

Auth: Ltr, AGRZ-SFM RC, DA TAGO, 8 Jul 69. Subj: Active Army Separation  
HOR: Goldsboro NC  
PL EAD or OAD: Raleigh NC  
Maj Comd/Agcy: HQ Sixth USA  
SPN: 246  
ETS: 7 Dec 71  
Component: RA  
PCS MDC: NZE2

FOR THE INDIVIDUAL

Assigned to: US Army Transfer Point (WOMYLA) this sta  
Reporting date: 7 December 1971  
Special Instructions: NONE

599. TC 300. Following individual DISCHARGED as indicated.

JARRELL, STEPHEN P 237-98-0519 PVI 09B00 USA Transfer Point (WOMYLA) Ft Ord CA

ADMINISTRATIVE ACCOUNTING DATA

Auth: Chapter 10, AR 635-200  
HOR: Goldsboro NC  
Perm adrs: 2804 Gayton, Goldsboro NC 21346  
PL EAD or OAD: Raleigh NC  
Last perm dy sta: Ft Ord, CA  
SPN: 246  
PCS MDC: 7BE2

FOR THE INDIVIDUAL

Reserve grade, component: NA  
Reserve assignment: NA  
Effective date of discharge: 7 December 1971  
Type of discharge: UNDER OTHER THAN HONORABLE CONDITIONS--DD FORM 258A  
Reason: NA

UMTS Act obligation: NA

Special Instructions: (a) Comply with the following numbered items of LA  
Supplemental Instructions (Appendix B, AR 310-10). 15

Exhibit D 2.

Para 599 SO 337 DA HQ USATC Inf, Ft Ord, Ft Ord CA 93941 dtd 3 Dec 71 (Cont)

FOR THE COMMANDER:



W. K. DIELEMAN  
Colonel, GS  
Chief of Staff

JAMES C. FUKUHARA  
LTC, AGC  
Adjutant General  
( )

DISTRIBUTION:

- 1 - AMNOR-DSEC
- 1 - AMNOR-AGAL
- 25 - AMNOR-EC-SA
- 1 - AMNOR-AGFP, ATTN: LT Newberry
- 1 - Provost Marshal
- 1 - Post Cnf Fac, ATTN: LT Harris
- 5 - USA Pers Con Fac USATC Inf (WOMYLN) Ft Ord CA 93941



DEPARTMENT OF THE ARMY  
BOARD FOR CORRECTION OF MILITARY RECORDS  
WASHINGTON, D.C. 20310-1803

Exhibit E 1.

MEMORANDUM OF CONSIDERATION

IN THE CASE OF: JARRELL, STEPHEN P.  
237-98-0519

BOARD DATE: 4 April 1990  
DOCKET NUMBER: AC89-06710

I certify that hereinafter is recorded the record of consideration of the Army Board for Correction of Military Records in the case of the above-named individual. The following members, a quorum, were present.

Mr. James C. Hise	Chairperson
Mr. James E. Vick	Member
Mr. David E. York	Member
Mr. David R. Kinneer	Executive Secretary
Ms. M. S. Bemusdaffer	Examiner

The Board, established pursuant to authority contained in Title 10, United States Code, section 1552, convened at the call of the Chairperson on the above date. In accordance with Army Regulation 15-185, the application and the available military records pertinent to the corrective action requested were reviewed to determine whether the application was filed within the time established by statute, and if not, whether it would be in the interest of justice to waive the failure to timely file.

The applicant requests correction of military records as stated in the application to the Board and as restated herein.

The Board considered the following evidence:

- Exhibit A - Application for correction of military records
- Exhibit B - Military Personnel Records (including advisory opinion, if any)



Exhibit E 2.

ABCMR Memorandum of  
Consideration (cont)

AC89-06710

There are no medical records documenting the injuries or treatment received as a result of the assault. The original medical and dental records are in the applicant's file but contain little or no information.

A DA Form 188, Extract Copy of Morning Report, shows that the applicant went AWOL again on 17 April 1971 from Company A, 3d Battalion, 1st Training Brigade.

After he returned to military control, charges were preferred against him for being AWOL from 17 April 1971 to 27 October 1971 in violation of Article 86 of the UCMJ. After being advised of his rights he submitted a request for discharge for the good of the service in lieu of trial by court-martial. He stated that he could not adjust to military life and he would go AWOL again if not released. Also, he stated that there had been no change in his medical condition since his last examination. The appropriate authority approved his request for discharge and directed that he be issued an Undesirable Discharge Certificate.

On 24 September 1981 the Army Discharge Review Board denied the applicant's request for upgrade of his discharge.

Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. A discharge under other than honorable conditions is normally considered appropriate. However, at the time of the applicant's separation the regulation provided for the issuance of an undesirable discharge.

Title 10, United States Code, section 1552(b), provides that applications for correction of military records must be filed before 26 October 1961, or within 3 years after discovery of the alleged error or injustice, whichever is later. Failure to file within 3 years may be excused by a correction board if it finds it would be in the interest of justice to do so.



STATEMENT OF MEDICAL CONDITION (When Examined More than 3 Days Prior to Separation) (AR 40-501)		DATE 7 DEC 71	Exhibit F
LAST NAME-FIRST NAME- MIDDLE INITIAL, GRADE & SERVICE NO. (Type or Print) 237980519 J ARRELL STEPHEN-P PUI			
ORGANIZATION P C F.			
LAST SEPARATION EXAMINATION			
DATE 10 NOV 71	MEDICAL TREATMENT FACILITY FOAH		
<p>I underwent a separation medical examination more than 3 working days prior to my departure from place of separation.</p> <p>TO THE BEST OF MY KNOWLEDGE, SINCE MY LAST SEPARATION EXAMINATION:</p> <p><input checked="" type="checkbox"/> There has been no change in my medical condition.</p> <p><input type="checkbox"/> My medical condition has changed as follows:</p>			
<p><u>Stephen P Jarrell</u> (Signature of Individual)</p>			

IV. Previous lawsuits:

If you have been a Plaintiff in a lawsuit, for each lawsuit state the case number and caption.  
(Example, Case Number: 2:08-cv-728 and Caption: John Smith vs. Jane Doe).

<u>Case Number</u>	<u>Caption</u>	
_____	_____	vs. _____
_____	_____	vs. _____
_____	_____	vs. _____

V. Relief

In this section please state (write) briefly exactly what you want the court to do for you. Make no legal argument, cite no case or statutes.

Plaintiff respectfully asks the court to order both  
the National Personnel Records Center and the Army  
Review Boards Agency to remove my discharge physical  
examination from Stephen P. Jarrell's file and return  
it to my Army records file. Leaving my Army discharge  
records in my brother's files will result in irreparable  
harm, both to me and my brother. In addition Plaintiff  
respectfully asks the court to order the United States  
to pay the Plaintiff a sum in the amount of \$1,200,000.00  
dollars for damages sustained by the Plaintiff in this  
case.

I state under penalty of perjury that the foregoing is true and correct. Executed on

this 5 day of November, 2019.

Richard M. Jarrell  
Signature of Plaintiff